

## **Routledge-Cavendish Mooting Skills Guide**

### **SAMPLE MOOT PROBLEM**

In The House of Lords

#### **R v Devagne**

Deborah Devagne, aged 12, had been suffering from an inoperable malignant brain tumour for 6 months. Although she was receiving significant amounts of medication to help with her pain, she was still, in the terminal stages of her life, suffering considerably. All other curative treatments had ceased and she was being nursed at home by her parents.

Following her prolonged illness, Daniel Devagne, Deborah's father, felt that neither he nor his daughter could cope any longer with her pain and suffering, and he suffocated her with a pillow.

Devagne was charged with murder, and at his trial in 2000 pleaded necessity as a defence to the charge. Jumble J held that necessity was not available as a defence to murder outside the strict factual situation in *A (Children) (Conjoined Twins: Surgical Separation)* [2000] 4 All ER 961.

On the question of the *mens rea* for murder, the trial judge concluded that the test of foresight of virtual certainty adopted in *A (Children)* was correct, and that a result foreseen as virtually certain is an intended result.

Devagne was found guilty of murder and unsuccessfully appealed to the Court of Appeal, which in July 2001 agreed with the trial judge on both points.

Devagne now appeals to the House of Lords; the questions certified by the Court of Appeal which gave permissions to appeal to the House of Lords are:

1. Is the test of foresight of virtual certainty as interpreted in *A (Children)* consistent with the earlier House of Lords decision in *R v Woollin* [1998] 4 All ER 103, which held that where a consequence is foreseen as 'virtually certain', the jury may (not must) find that the defendant had the necessary intention?
2. Is the defence of Necessity available outside the particular circumstances that arose in *A (Children)*?